



California Fair Political Practices Commission

September 5, 1989

Joseph I. Kelly
Pacific Gas & Electric Company
P. O. Box 7442
San Francisco, CA 94120

Re: Your Request for Advice
Our File No. A-89-458

Dear Mr. Kelly:

You have requested advice on behalf of Pacific Gas & Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) and Southern California Gas (So Cal Gas) concerning the lobbying disclosure provisions of the Political Reform Act.¹

QUESTION

Will six vehicles which PG&E, SDG&E and So Cal Gas plan to provide to the Legislature and to certain state agencies be reportable by the companies as gifts to the legislative and state agency officials who use them, or will the vehicles be considered gifts to the Legislature and the state agencies involved?

CONCLUSION

Under the circumstances presented in your letter, the vehicles will be gifts to the Legislature and the agencies and need not be reported on the companies' lobbyist employer reports (Form 635).

FACTS

PG&E, SDG&E and So Cal Gas are lobbyist employers as defined in Section 82039.5. Each company intends to provide two natural gas converted vehicles (six vehicles in all) for a period of time to the Legislature and certain state agencies as part of a demonstration project. The vehicles are to be used as designated by the Legislature and the state agencies for the business

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 81000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

purposes of those entities. The Legislature and the state agencies intend to have the vehicles used by those officials and employees who regularly use state vehicles. The companies have not limited the use of the vehicles to specified individuals. The use of the vehicles will be formalized by the Legislature and the state agencies by way of formal resolution or other written public record, as well as a memorandum of understanding with the companies.

ANALYSIS

Employers of lobbyists are required to file periodic reports disclosing, among other things, gifts provided to legislative and state agency officials. (Sections 86114, 82004, 82038.) The Act defines the term "gift" as:

... any payment to the extent that consideration of equal or greater value is not received....

Section 82028.

The term "payment" is defined in Section 82044 to include:

... a payment, distribution, transfer, loan advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

However, in In re Stone (1977) 3 FPPC Opinions 52, the Commission determined that there may be some situations where surrounding circumstances show that the gift was made to the official's agency only, without providing any significant or unusual benefit to the official. To determine that a gift has been made to the official's agency and not to the official who uses it, the following four criteria must be satisfied:

1. The donor intends to donate the gift to the agency and not to the official;
2. The agency exercises substantial control over use of the gift;
3. The donor has not limited use of the gift to specified or high level employees, but rather has made it generally available to agency personnel in connection with agency business without regard to official status; and
4. The making and use of the gift is formalized in a resolution (or written public record in the case of administrative agencies not possessing the legislative power of adopting resolutions) which embodies the standards set forth above.

Joseph I. Kelly
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The Stone opinion concluded that officials who receive use of a gift which satisfies the above standards need not disclose the gift.

Your letter indicates that the companies, the Legislature and the state agencies involved have taken or intend to take whatever steps are necessary to satisfy these standards. To the extent that they follow the procedures outlined in your letter, the vehicles will be considered gifts to the Legislature and to the state agencies involved and not to the officials who incidentally use them. Therefore, PG&E, SDG&E and So Cal Gas are not required to disclose the vehicles on their lobbyist employer reports.

If you have additional questions, please do not hesitate to contact me at (916) 322-5662.

Sincerely,

Kathryn E. Donovan
General Counsel

Carla J. Wardlow
By: Carla J. Wardlow
Assistant Chief, Technical
Assistance & Analysis Division

Mailing Address

P.O. Box 7442
San Francisco, CA 94120

FPPC

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July 31, 1989



Legal Division
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

Dear Sir:

Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E) and Southern California Gas (So Cal Gas) (companies) each intend to provide two natural gas converted vehicles (six vehicles in all) for a period of time to the state Legislature and certain state agencies as a part of a demonstration project. The vehicles are to be used as designated by the Legislature and agencies for the business purposes of those entities. The Legislature and the agencies intend to have the autos used by those officials and employees who regularly use state vehicles. The companies have not limited the use of the vehicles to specified officials or employees but rather have left such determination to the Legislature and agencies. The Legislature intends to formalize the use of the vehicles by way of a memorandum of understanding (MOU) between the companies and the joint rules committee as well as a resolution of that committee containing the standards set forth in the Commission's Stone opinion (3 FPPC 52 at 57 (1977)). The state agencies authorized to adopt resolutions will also adopt similar resolutions and enter into a MOU. Other state agencies will also enter into MOUs and make an appropriate written public record pertaining to the use of the vehicles.

By way of this letter, the companies are requesting written advice under Government Code section 83114(b) as to their duties and obligations under the Political Reform Act as employers of lobbyists who must report gifts to elective state officials, legislative officials and agencies officials of agencies they attempt to influence (Gov. Code §§ 86116(f), 86111). Under the facts herein stated, is the provision of these vehicles, if used by any elective state official, legislative official or agency officials, a gift to the Legislature and state agencies or a gift to the officials by the donor companies under Government Code sections 86111(a), 86116(f) 87103(e) and 87207(4)?

Legal Division

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July 31, 1989



Your early response to this inquiry would be appreciated as the program is planned to commence in early September, 1989. If I can provide further information or clarify the request, please do not hesitate to call me.

Sincerely,

A handwritten signature in black ink that reads 'Joseph I. Kelly'. The signature is written in a cursive, slightly slanted style.

JOSEPH I. KELLY

JIK:md



California Fair Political Practices Commission

August 4, 1989

Joseph I. Kelly
PG&E
P.O. Box 7442
San Francisco, CA 94120

Re: Letter No. 89-458

Dear Mr. Kelly:

Your letter requesting advice under the Political Reform Act was received on August 2, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Jeanne Pritchard
by *Ked*
Jeanne Pritchard
Chief Technical Assistance
and Analysis Division

JP:plh